

REMARKS

Comments of the applicant below are each preceded by related comments of the examiner in small, bold type.

2. Applicant's arguments filed 06/27/05 have been fully considered but they are not persuasive.

In the page 9, the Applicant alleged that "Neither Peisa nor Patel describe or would have made obvious "controlling the order in which packets are transmitted,". The Applicant's argument is not persuasive.

Patel (U.S. Patent No. 6,865,185) discloses "controlling the order in which packets are transmitted," (see col. 1, lines 42-45, the IP QoS architecture provides tools for marking IP flows, controlling and shaping the traffic of various IP flows, and managing various IP queues in order to ensure QoS behavior for each of service). Clearly, Patel discloses "controlling the order in which packets are transmitted,".

In claims 1 and 26, for example, what the order of packet transmission is based on are "rates of transmission of the outbound packets and the service class associated with each of the received data packets corresponding to the outbound packets." The examiner appears to concede that Peisa does not describe and would not have made obvious this dependence on transmission rates, but instead the examiner contends that the feature is found in Patel. However, Patel distinctly teaches away from this feature at col. 10, lines 27-36 by ordering the transmission based on arrival times:

In order to maintain fairness among flows, packets are checked-out of the queues 74 in a first in first out (FIFO) order ... Thus, where sufficient bandwidth is available to service the flows present and various class queues 74 in a virtual group 36, the packets 60 are serviced in the order in which they arrived. Similarly, packets output from the different virtual groups 36 are serviced in an order in which they arrive in order to maintain fairness among the groups 36.

Patel does not take into consideration the "rates of transmission of the outbound packets" when determining the order in which the outbound packets are transmitted.

Neither Peisa nor Patel describes nor would have made obvious "controlling the order in which packets are transmitted based on the transmission rate and the service class of the packets" as recited in claims 1 and 26.

The dependent claims are patentable for at least the same reasons given with respect to the independent claims from which they depend.

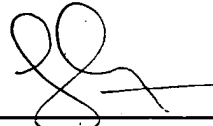
The applicant acknowledges the examiner's indication that claim 27 is patentable.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Enclosed is a \$100.00 check for excess claim fees. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 12/12/05



Mandy Jubang
Reg. No. 45,884

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906